

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLYMPUS SECURITIES, LLC,

Plaintiff,

- against -

UNITED FIBER & DATA, LLC,

Defendant.

Case No. 16-cv-01931 (VEC)

**AFFIDAVIT OF
JEFFREY BERMAN
IN SUPPORT OF
OPPOSITION TO MOTION
TO DISMISS**

STATE OF NEW YORK)
)
) ss:
COUNTY OF WESTCHESTER)

JEFFREY BERMAN, being duly sworn, deposes and says:

1. I served as the head of investment banking at Olympus Securities, LLC (“Olympus”) from May 9, 2003 to April 28, 2016. I respectfully submit this affidavit in support of plaintiff Olympus’s opposition to defendant United Fiber & Data, LLC’s (“UFD”) motion to dismiss Olympus’s complaint.
2. On or about April 24, 2015, UFD engaged Olympus to be its exclusive investment banker. UFD hired Olympus to help it raise capital that could be used to fund UFD’s construction of its high-speed fiber-optics project, among other things.
3. As the head of investment banking at Olympus, I was responsible for Olympus’s engagement with UFD and was the point of contact at Olympus for UFD.
4. After being engaged on or about April 24, 2015, Olympus worked diligently to learn about UFD’s business, introduce UFD to prospective investors, and negotiate the terms of potential investments.

5. Despite the fact that Olympus obtained multiple terms sheets for UFD, William Hynes, UFD's current chief executive officer, sent my colleague and me an email on August 17, 2015 informing us that UFD was (purportedly) terminating the engagement.

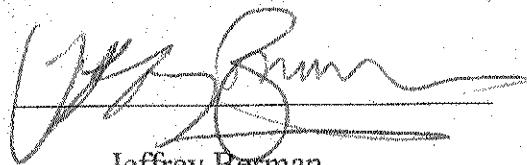
6. In response to that email, I reached out to UFD to try to understand what had happened, but UFD was nonresponsive for two months.

7. Finally, in October 2015, I spoke by phone with Chad Taylor, one of UFD's principals and co-founder. During that conversation, Mr. Taylor told me, among other things, that UFD had already raised substantially more than \$30 million in financing from Louis Appell, Jr. and Robert Kinsley.

8. In January 2016, I had a similar phone call with Brian Mass, UFD's former chief financial officer. During that conversation, Mr. Mass told me that UFD had raised "several million" dollars from Mr. Appell.

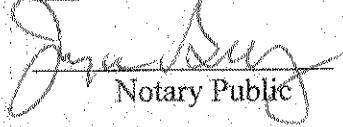
9. On February 18, 2016, I read UFD's announcement that it had deployed its high speed network through the Hudson River Crossing. Based on my understanding of UFD's financial condition at the time of our engagement, I do not believe that UFD would have been able to pay for this expansion without raising new capital. Indeed, at the time of Olympus's engagement with UFD, representatives of UFD told me that UFD was not even in a financial position to pay Olympus its third monthly retainer payment of \$10,000.

10. I declare under penalty of perjury that the foregoing is true and correct.



Jeffrey Berman

Sworn to before me this
23 day of May 2016



Notary Public

JOYCE GILROY
Notary Public, State of New York
No. 01Gi6269856
Qualified in Richmond County
Commission Expires Oct. 9, 2016

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